

ORDER BELOW APPLICATION (EXHIBIT 31) IN
SESSION CASE NO. 96/2019
(STATE VS. TANAJI & OTHS.)
(PASSED ON : 04/07/2022)

Nature of the Application.

1. This is an application filed by the accused-Tanaji Baliram Bhosale (for short 'accused') praying to grant relief to him to enable him to cast vote in the Vitthal Co-operative Sugar Factory, Venu Nagar (for short 'factory') election which is being conducted on 05/07/2022 from 8.00 am to 5.00 pm.

Contents in the Application.

2. The accused has contended that he is under-trial prisoner and at present is in Magalwedha Prison. He is member of the factory. The election of the factory is scheduled on 05/07/2022. He has legal right to vote in the election of the factory. Therefore, it is necessary to permit him to go to the factory under escort to cast his vote in between the period from 8.00 am to 5.00 pm on 05/07/2022.

3. On these grounds the accused has prayed to grant the application.

Contents in the Reply of the Additional Public Prosecutor.

4. The Additional Public Prosecutor (for short 'A.P.P.') has filed say.

5. The A.P.P. has strongly objected the application. He has contended that if the accused is released or escorted there is possibility that he will abscond.

6. On these grounds the A.P.P. has prayed to reject the application.

The Arguments.

7. I have heard Shri. M. B. Shinde, advocate for the accused

and Shri S. V. Wangikar, Additional Public Prosecutor (for short 'A.P.P.') for the prosecution, in extenso.

8. They argued in consonance with their contentions in the application, say and keeping in mind the established principles of Law.

9. In order to avoid repetition it is not necessary to note the arguments.

Points and Findings.

10. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

	Points	Findings
1)	Whether a case has been made out by the accused to permit him to go to the factory under escort to cast his vote in between the period from 8.00 am to 5.00 pm on 05/07/2022, as prayed for ?	No.
2)	What order ?	Application rejected.

Reasons as to Point Nos. 1 and 2.

11. There cannot be any dispute that the accused is involved in a serious offence and his previous applications seeking bail are rejected on merit.

12. The final report clarifies that the informant-Dattatray Suresh Pujari (for short 'informant') has alleged against him and the other accused that he by joining hands with other accused kidnapped Santosh Shinde (for short 'Santosh') on 29/07/2019 from Mangalwedha Bus Stand at about 16.30 hours. Santosh was made to drink liquor by him and other accused and was taken by them in a Car

to Alkunte Nagar, District Vijapur and was killed by them by assaulting with stones and hence, C.R. No. 369/2019 is registered against him and the other accused.

13. The accused has denied his involvement in the offence in toto. However, considering the number and nature of injuries seen in the photos of Bhima and also in the post mortem report, in my firm opinion the injuries found on the person of Bhima were caused definitely due to strangulation by the accused and the other accused-Ananda. Under such circumstances when the Santosh is killed brutally by the accused, it cannot be said that he is falsely implicated in the offence.

14. There is no dispute that the closed circuit television footage is recovered from the S.T. Stand, Mangalwedha in which it is clearly seen that Santosh was in the company of the accused. The accused is identified as the person who was last seen with Santosh. The accused has failed to clarify his presence with Santosh that too before the incident. The statements of the witnesses proves that the accused is involved positively in killing Santosh, prima-facie. Therefore, it cannot be said that the accused was not involved in killing Santosh.

15. In view of all the facts and the intention gathered from all the circumstances it could be said that case is made out under Section 302 of the I.P.C., prima-facie.

16. Admittedly, the previous bail applications filed by the accused are rejected, on merit. While rejecting his previous bail applications, it is observed that there is sufficient evidence against the accused proving his positive involvement in the offence with which he is charged and therefore, he is not entitled for any interim relief, as

prayed for.

17. After considering the facts and circumstances and the role played by the accused in commission of crime it is clear like cloudless sky that the accused has committed an offence under Section 302 of the I.P.C. which is of serious nature. There is sufficient evidence against the accused, prima-facie. Therefore, he is not entitled for any interim relief, as prayed for.

18. The trial has not commenced. Therefore, I am of the considered view that if interim relief, as prayed is granted in favour of the accused he will create hurdles in the trial or will try to tamper the evidence or will flee from justice. Therefore, his application seeking interim relief can not be granted, as prayed.

19. The accused has produced on record the voters list and his Adhar card (Exhibit 32/1 and 2) which make it clear that he is voter and is resident of village Ambe.

20. The accused has failed to produce on record any evidence prima-facie to prove that the election of the factory is scheduled on 05/07/2022 and he is entitled to cast his vote. The voters list is not authentic copy, therefore, it cannot be held that the accused is member of the factory and is entitled to cast his vote in the factory election.

21. The accused is in custody since long. It is not the case of the accused that he is put behind the bars on the eve of the factory election with a view to deprive him of the opportunity to vote in the factory election so as to achieve a desired result.

22. Above all, if at all the accused was so interested in casting his vote in the factory election then the question remains unanswered why this application was not filed by him well in time. This showed that there are no bonafides on the part of the accused seeking interim

relief.

23. I am unable to persuade myself with the argument advanced by Shri. Shinde, advocate for the accused that the accused is entitled for interim relief because (i) he has legal right to cast his vote in the election of the factory and (ii) no harm will be caused to the prosecution if his application is granted. The reasons are :-

- That positive involvement of the accused is brought on record that he killed Santosh, prima-facie.
- That the offence alleged to have been committed by the accused is very serious.
- **That the possibility of the accused tampering with the witnesses cannot be ruled out considering his involvement and the nature of offence.**
- That this is an application seeking interim relief filed by the accused however, considering the nature of offence with which the accused is charged and his involvement he is not entitled for any interim relief, as prayed.
- That considering my discussion, supra.

24. To sum up, the offence with which the accused is charged is of serious nature. **There is prima-facie evidence to hold accused's involvement in the offence** (emphasis supplied). The facts disclosed from the final report would show that the evidence collected is sufficient to constitute an offence under Section 302 of the I.P.C. as well as positive involvement of the accused. Therefore, I am of the view that if the application is granted it will hamper the trial and the accused will tamper the evidence. The involvement of the accused in the crime registered against him is clear. **Considering the merits of the matter, gravity of the offence and positive involvement of the**

accused, he is not entitled to cast his vote in the factory election. If that be so, there is no other alternative before me than to reject this application. For this view I am buttressed by the case of Anukul Chandra Pradhan V/s. Union of India and Ors., (1997) 1 SCC 1, wherein the Hon'ble Supreme Court has observed :-

"It is well known that for the conduct of free, fair and orderly elections, there is need to deploy considerable police force. Permitting every person in prison also to vote would require the deployment of a much larger police force and much greater security arrangement in the conduct of elections. Apart from the resource crunch, the other constraints relating to availability of more police forces and infrastructure facilities are additional factors to justify the restrictions imposed by sub-section (5) of Section 62 of the Representation Of The People Act, 1951.

A person who is in prison as a result of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the other who are not in prison. The classification of persons in and out of prison separately is reasonable. Restriction on voting of a person in prison result automatically from his confinement as a logical consequence of imprisonment. A person not subjected to such a restriction is free to vote or not to vote depending on whether he wants to go to vote or not; even he may choose not to go and cast his vote. **In view of the restriction on movement of a prisoner, he cannot claim that he should be provided the facility to go and vote.** Moreover, if the object is to keep persons with criminal background away from the election scene, a provision imposing a restriction on a prisoner to vote cannot be called unreasonable.

The classification between the persons

who are in custody and those who are not in custody, is a reasonable classification based on an intelligible differentia".

25. In view of the above-mentioned facts and circumstances of the case, I am declined to grant the application, as prayed for.

26. I leave open the contentions of the parties on the merits of the trial.

27. Accordingly, I answer point No. 1 in the negative and point No. 2 as application rejected.

28. In the result, following order :-

ORDER

The application (Exhibit 31) is rejected.

(Pronounced in the open Court).

Date : 04/07/2022.

(M.B.Lambe)
Additional Sessions Judge,
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe,
District Judge – 1 &
Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 04/07/2022
- (d) Order uploaded on : 06/07/2022